

SECTION II – RESPONSIBILITIES

Among the entities/persons involved in the compliance part of the tax credit program are the California Tax Credit Allocation Committee (CTCAC), the project owner, and the management company. Their various responsibilities are set forth below.

Part 200 California Tax Credit Allocation Committee

The California Tax Credit Allocation Committee allocates and administers the tax credit program for the State of California. The responsibilities of CTCAC are as follows:

A. Issue IRS Form 8609 (Low-Income Housing Certification)

An IRS Form 8609 is prepared by CTCAC for each building in the project. Part I of the Form is completed by CTCAC and then sent to the owner when the project is Placed In Service and all required documentation is received by CTCAC.

Part II of the IRS Form 8609 must be completed by the owner in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form is sent to the Compliance Section of CTCAC. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed and each year thereafter in the compliance period. After signing and dating Part II of the form, the owner should make sixteen (16) copies of it, one for each of the tax credit compliance years.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. CTCAC cannot give legal or tax advice on the filing or completion of tax forms.

The issuance of the IRS Form 8609 begins the compliance monitoring period. A sample copy of the form is included in Appendix 5.

B. Prepare Regulatory Agreement/Restrictive Covenants

CTCAC will prepare a Regulatory Agreement (Land Use Restrictive Agreement) prior to issuance of the IRS Form 8609. This document must be recorded before the end of the calendar year in which credit is first claimed. When the original recorded document, from the County Recorder's Office in which the property is located, is returned to CTCAC and all fees have been paid, the IRS Form 8609 will be sent to the owner.

C. Review Annual Owner Certification

For information on the Annual Owner Certification, see Section II, #210 D 1.

D. Review Project Status Report

For information on the Project Status Report, see Section V, #540 D.

E. Review Annual Operating Expense Report (AOE)

For information on the Annual Operating Expense Report, see Section V, #540 C.

F. Conduct On-site Monitoring

Currently, CTCAC will conduct in-depth on-site compliance monitoring for at least 33% of the total portfolio of tax credit projects each year. Owners of the selected projects will be required to provide detailed information on tenant income and rent for 20% of the low-income units in each building in the project. Information to be reviewed will include, but is not limited to, the annual income certifications, the documentation received to support

those certifications, and rent records. CTCAC retains the right to perform an on-site inspection of any low-income building at any time during the compliance period. For more information about on-site monitoring, see Section V, #550.

Beginning in 2001, CTCAC will conduct file and on-site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is Placed In Service, and once every three years thereafter. The physical inspections will be conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on or off-site.

G. Notify IRS of Noncompliance

CTCAC will notify the IRS of instances of noncompliance. For information on noncompliance, see Section VI.

H. Record Retention

CTCAC will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. CTCAC will retain records of noncompliance or the failure to certify compliance for six years after its filing an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

I. Conduct Training and Provide Continuing Education

CTCAC will conduct or arrange compliance training conferences and will disseminate information regarding the date and location. CTCAC will offer continuing education to assist the owner, the management company, and on-site personnel in complying with federal regulations and state rules. LIHTC staff can be contacted at:

Low-Income Housing Tax Credit Program
California Tax Credit Allocation Committee

915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

J. Rural Housing Service (RHS) Agreement

CTCAC currently has an agreement with the RHS (formerly known as the Farmers Home Administration) with respect to the provision of monitoring certain tenant and rent information. RHS projects are subject to the compliance requirements outlined in this manual.

K. Subcontracting of Functions

In 2001, CTCAC began awarding a contractor certain monitoring functions in the following counties only: Los Angeles, Orange, Riverside, San Bernardino and San Diego. From January 1, 2006 to July 2007, CTCAC no longer used an outside contractor. A temporary contract will be awarded in July of 2007 for one fiscal year only. At this time the decision to continue with a contractor beyond 2007/2008 fiscal year has not been determined.

L. Freedom of Information Act

The California Public Records Act (PRA) [Government Code 6250-6270](#), is similar to the federal Freedom of Information Act -- the purpose of these acts is to give private citizens greater access to government information. With some exceptions, the PRA considers records maintained by most state agencies to be public records, but also recognizes the right to individual privacy.

To make a FOIA or PRA request, please submit it in writing to:

Tiffani Armstrong
c/o CTCAC FOIA Request
915 Capitol Mall, Room 485
Sacramento, CA 95814

CTCAC will charge for the cost of copying the documents only. No other fees or charges apply. The turnaround time for all requests is 10 business days.

Part 210 Owner of Project

In exchange for the low-income housing tax credit benefits, the owner must adhere to certain requirements and accept responsibilities, outlined as follows:

A. The project owner should be knowledgeable about the following:

1. The credit year of the project. (The date of allocation.)
2. The date(s) the building(s) was Placed In Service. (The Placed In Service date is the date of first possible occupancy, not necessarily actual occupancy. Generally, this is the certificate of occupancy date or temporary certification of occupancy, if applicable.
3. If a rehabilitation project,
 - a. whether or not tenants were required to move out during rehab.
 - b. whether or not the building was occupied during the rehab.
4. The number of buildings in the project.
5. The Building Identification Number (BIN) for each building in the project.
6. The percentage of the residential units in the project that are tax credit eligible, or the percentage of floor space that is tax credit eligible. For more information see section III, #340E.
7. The year when credit was first claimed with the IRS.
8. The terms under which the tax credit reservation was made, including statutory set-aside, deeper targeting agreements, etc. For more information, see Section III, #370 and #380.
9. The minimum set-aside elected:
 - a. 20/50
 - b. 40/60

B. Good Cause Eviction

On July 29, 2004, The Internal Revenue Service (IRS) issued Revenue Ruling 2004-82 which set forth that all Housing Credit Properties are prohibited against evicting or terminating tenancy of tenants in low-income housing units for other than good cause throughout the entire Extended Use Period.

In accordance with Revenue Ruling 2004-82, effective July 30, 2004, a low-income resident of any Housing Tax Credit project may not be evicted or otherwise have their lease terminated other than for good cause. This prohibition includes the non-renewal of leases or rental agreements other than for good cause. Housing Tax Credit unit occupants have the right to specifically enforce this prohibition in State court. Generally, “good cause” is defined as “the serious or repeated violations of a material term of the lease”, as that definition is applied with respect to federal public housing.

C. Comply with Terms of Application

For more information regarding the compliance monitoring requirements for representations made by project owners in their applications, see Section III, #370 and #380.

D. Meet Initial Eligibility Requirements

1. Submit compliance monitoring fees as described in Section V, #570.
2. Submit to CTCAC a copy of the signed and dated IRS Form 8609 for each building, with Part II completed- signed and dated, at the same time the monitoring forms for the first year of the compliance period are submitted.

3. If the composition of the ownership entity changes, the owner must provide details and include a sales agreement and a copy of the bond if the property has been sold. For more information on project sales, see Section VI, #690.

E. Prepare and Submit the Annual Certification Package

The Annual Certification Package (ACP) consists of three reports: the Annual Owner Certification (AOC), the Project Ownership Profile (POP), and the Annual Operating Expense Report (AOE).

The Annual Certification Package forms and files are available on our website:

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

*The Annual Certification Package is due by 5:00 PM, March 1st of each year. If March 1st falls on a weekend or holiday, the ACP is due the next business day. It is solely the owner's responsibility to submit the complete Annual Certification Package before the deadline. CTCAC will **NOT** notify the owner for submission of the Annual Certification Package.*

Failure to submit all three reports (AOC, POP, and AOE) completely and legibly on or before the due date is noncompliance and can ultimately result in the issuance of an IRS Form 8823 and/or a recommendation for negative points (Regulation Section 10325(c)(3)).

1. Annual Owner Certification

The owner of any building(s)/project which has claimed or plans to claim low-income housing tax credit must certify to CTCAC, under penalty of perjury, **annually**, for each year of the compliance period, on CTCAC's Owner Certification form, that, for the preceding 12 month period:

- (i) The project meets the requirements:
 - (A) The 20/50 test under §42(g)(1)(A), the 40-60 test under §42(g)(1)(B), or the 40/60 test under §42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test was applicable to the project; and
 - (B) If applicable to the project, the 15/40 test under sections 42(G)(4) and 142(D)(4) for "deep rent skewed" projects;
- (ii) There was no change in the applicable fraction (as defined in §42 (c)(1)(B) of the Code) of any building in the project;
- (iii) The owner has received an annual income certification from each low-income tenant and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of §1.42-5 (Compliance Monitoring Requirements);
- (iv) Each low-income unit in the project was rent restricted under §42(g)(2);
- (v) All units in the project were for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD),

24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes, and the State or local governmental unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice, or a copy of the violation report or notice to this certification. In addition, the owner must state whether the violation has been corrected;
- (vii) There has been no change in the eligible basis (as defined in §42(d)) of any building in the project, (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- (viii) All tenant facilities included in the eligible basis under §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (ix) If a low-income unit in the project becomes vacant during the year, that reasonable attempts were, or are being made to rent that unit, or the next available unit of comparable or smaller size, to tenants having a qualifying income before any units in the project were, or will, be rented to tenants not having a qualifying income;
- (x) If the income of tenants of a low-income unit increased above the limit allowed in §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;
- (xi) A regulatory agreement as described in §42(h)(6) was in effect, including the requirement that an owner may not refuse to lease a unit in the project to a prospective tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective tenant as the holder of such voucher or certificate.
- (xii) All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv));
- (xiii) The project met all terms and conditions recorded in its Regulatory Agreement, if applicable. (As detailed in the Regulatory Agreement and Exhibit A to the Regulatory Agreement.);
- (xiv) The applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
- (xv) No change in ownership of the project has occurred during the reporting period;
- (xvi) The Project has **not** been notified by the Internal Revenue Service that it is no longer a “qualified low-income housing project” within the meaning of Section 42 of the IRC.
- (xvii) No additional tax-exempt bond funds or other Federal grants or loans

with interest rates below the applicable federal rate have been used in the project since it was placed in service;

- (xviii) On December 1, _____, the number of units that were **occupied** by tax credit eligible households was _____. (please enter the year and number of units)
- (xix) The project did not suffer any casualty loss in the year being reported.

An Annual Owner Certification must be submitted to CTCAC for each year in which a project was in service or occupied for one day or more. The form should not be completed prior to January 1, and must be received by CTCAC on March 1st. Failure to submit a legible and thoroughly completed form when it is due will be considered an act of noncompliance. A copy of this form is included in Appendix 3.

2. Annual Operating Expense Report (AOE):

CTCAC requires an Annual Operating Expense Report at the AOC filing. The information will be used for database purposes only. The form will be available on our website at www.treasurer.ca.gov/ctcac/compliance.asp the report will be due electronically. Failure to submit a completed form when it is due will be considered an act of noncompliance.

F. Train On-site Personnel

The owner must make certain that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the project.

G. Ensure Proper Maintenance

The owner is responsible to ensure that the LIHTC project is maintained in a decent, safe, sanitary condition, and in good repair. Failure to do so is a reportable act of noncompliance.

H. Recordkeeping and Record Retention

The owner of any building for which credit has been or is intended to be claimed must keep records that include all of the information set forth below, **on a building by building basis**, for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. **However, the records for the first year of the credit period must be kept for six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.**

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rent unit);
2. The percentage of residential rental units in the building that are low-income units;
3. The rent charged on each residential rental unit in the building and the applicable

- utility allowance;
- 4. The number of occupants in each low-income unit;
- 5. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (This information must include the unit number, tenant name, move-in date and move-out date for all tenants, including market rent tenants.);
- 6. The income certifications of each eligible tenant;
- 7. Documentation to support each eligible tenant's income certification;
- 8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- 9. The character and use of nonresidential portion of any building included in the project's eligible basis (for example, any community building, recreational facility, manager's unit(s), etc.) available to all tenants and for which no separate fee is charged.

I. Maintain a Development File

CTCAC suggests that Owners maintain a Development File that contains all pertinent documents for the project. The Development File should contain:

- (1) All approved tax credit applications together with applicable attachments;
- (2) Recorded copy of the Regulatory Agreement/Restrictive Covenant (except for pre-1990 credit projects);
- (3) For 1987-89 projects, election to calculate rent on a bedroom basis, if applicable;
- (4) IRS Forms 8609 and 8586 for each building for each year credit is claimed;
- (5) All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS, etc.);
- (6) Documentation that the project complies with any statutory set-asides or Qualified Allocation Plan requirements. For more information, see Section III, #370 and #380;
- (7) Utility Allowance documentation, for each utility allowance update or revision which must occur at least once per year. For more information regarding utility allowances, see Section III #330.

J. Maintain a Tenant/Unit File for Each Unit in the Project

The Tenant/Unit File requirements are outlined in Section IV, #460.

K. Prepare and Submit Low-Income Housing Credit (IRS Form 8586)

One IRS Form 8586 must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. IRS Form 8586 must be attached to IRS Form 8609 and Schedule A (IRS Form 8609) and submitted annually with the owner's federal tax return. A sample copy of the form is included in Appendix 5.

L. Administration and Notification

The owner must notify CTCAC immediately in writing of any changes in the ownership composition or in the management agent, such as name, address, and telephone number.

Part 220 Management Company and On-site Personnel

The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information, as needed, to CTCAC and submit all required reports and documentation in a timely manner. *The Owner has the ultimate responsibility for compliance and proper administration of the LIHTC program.*